

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

444 North Third Street, Suite 410

Sacramento, CA 95814

Phone: (916) 322-3394; FAX: (916) 445-6167

E-mail: cbot@dca.ca.gov; Web: www.bot.ca.gov

State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
BOARD MEETING MINUTES
November 30, 2006
Ontario, California**

Board Members Present

Luella Grangaard, President
Margaret Cunningham
Mary Evert
Christine Wietlisbach
Nancy Michel

Staff Present

Laura Freedman, Legal Counsel
Heather Martin, Executive Officer
April Freeman, Associate Analyst

A. Call to Order, Roll Call, Establishment of a Quorum

President Luella Grangaard called the meeting to order at 10:00 a.m. The Secretary, Mary Evert, called the roll. A quorum of the Board was present.

B. President's Remarks

Ms. Grangaard thanked everyone for attending and apologized for the late notice and recent meeting cancellations. She explained that because the Board is very small and must have a quorum to vote, having meetings without a quorum is ineffective. She requested that the Occupational Therapy Association of California (OTAC) assist the Board in spreading the word to its members regarding rescheduled meetings. She stated that the Department of Consumer Affairs (DCA), Board members and OTAC have been working very hard to get additional Board members. Letters of recommendations have been sent to the individuals who make the appointments. She hopes very soon there will be more appointments made so the Board can continue to do its work.

Ms. Grangaard changed the order of the agenda. Items "E" and "O" will be switched.

C. Approval of the May 18, 2006, Board Meeting Minutes

The Board reviewed the minutes of the May 18, 2006, Board meeting and made typographical corrections.

- ❖ Christine Wietlisbach moved to approve the May 18, 2006, minutes as corrected.
- ❖ Margaret Cunningham seconded the motion.
- ❖ The motion carried unanimously.

Ms. Grangaard introduced the Board's new legal counsel, Laura Freedman-Edison, who was the Board's original counsel. The Board's prior legal counsel is on maternity leave.

D. Acceptance of the May 18, 2006, Advanced Practice Regulatory Committee meeting minutes

The Board reviewed the minutes of the May 18, 2006, Advanced Practice Regulatory Committee meeting. The Committee has been disbanded.

- ❖ **Christine Wietlisbach moved to accept the May 18, 2006, Advanced Practice Regulatory Committee minutes.**
- ❖ **Margaret Cunningham seconded the motion.**
- ❖ **The motion carried unanimously.**

O. Future Meeting Dates (out of order)

- **March 1, 2007 – San Diego**
- **May 24, 2007 – Bay Area**
- **July 26, 2007 – Sacramento**
- **September 18, 2007 – Los Angeles**
- **November 29, 2007 – Bay Area**

F. Advanced Practice

1. Discussion of Use of Initials

Ms. Evert explained that in October 2006 she researched the issue of using the initials currently encoded on licensees' pocket licenses. The issue arose from a code that was selected by staff to indicate on a very small piece of paper what areas of approved advanced practice a licensee held. The use by licensees of advanced practice approval coding initials and not spelling out the complete title of what this code means has been raised as a concern. The Board has consulted with legal experts at DCA and held public hearings concerning this issue. The Board's role is consumer protection and clarifying to the consumer that OTs have met the minimum competency requirements for advanced practice. The use of the initials may cause some confusion when codes are similar to initials used by other private or public certifying entities who evaluate therapists' competencies in similar areas of advanced practice. The codes were instituted as a tracking system for staff use. How practitioners choose to notify the public that they are advanced practice approved is a matter of choice and a freedom of speech issue. In the Board's code of ethics, the practitioner has a responsibility to accurately put forth their practice areas of expertise to the public, however, they cannot be unclear, and they may not make or imply claims that are beyond their actual credentials.

- ❖ Ms. Evert moved that, to ensure any abbreviated coding used by the Board does not contribute to possibilities of consumer confusion, the following occur:
 1. The Executive Officer investigate and recommend to the Board other coding combinations for the use on pocket licenses that are comprised of one or more symbols (possibly numbers), that indicate areas of advanced practice attained by licensees. The codes should be highly differentiated from any letter combinations used by other certifying agencies or organizations. The wall certificates the Board issues should spell out the area(s) of approval in advanced practice.
 2. The Board's Executive Office prepare draft regulatory or policy language that clarifies to licensees and the public that these identification codes on the pocket licenses have specific and limited use with those having approval in advanced practice. It should state that these codes are only for this purpose and are not created for use as initials following a therapist's name. For clarity to consumers, patients and all other audiences of approval in areas of advanced practice, the Board recommends to licensees the spelling out of the titles of advanced practice when used in correspondence, documentation, resumes or curriculum vitae, and in business marketing materials for occupational therapy practice.
 3. The Board grant the use of the initial "L" or "C" to those licensed as occupational therapists or certified as occupational therapy assistants. The Executive Officer will check that all policies and regulatory language clearly reflect that these are the only initials that we officially grant for use by OTs and OTAs following their name and report any recommendations regarding this to the next Board meeting.
- ❖ Ms. Grangaard stated that there are three items, as one motion, on the floor for discussion. She requested a second. Ms. Martin clarified that individuals receiving an initial wall certificate would not yet have an advanced practice approval to be printed on the certificate. She asked the Board if they would prefer that staff send new wall certificates to individuals who receive advanced practice approval. Ms. Evert responded that her intent was that licensees would receive a certificate that would indicate the area of advanced practice approval. She requested that her motion be amended to direct staff to issue wall certificates for advanced practice approval.
- ❖ Marget Cunningham seconded the motion.
 - Ms. Wietlisbach moved that each item be discussed separately. No objections.
 - Motion accepted.
- ❖ Discussion: The Board discussed Motion Item #1 concerning the Executive Officer investigating alternative coding and making recommendations to the Board. Ms. Martin reiterated her original recommendation to use AP-1, AP-2 and AP-3. She volunteered to research additional alternatives and report back at the next meeting.

- Mary Evert moved to amend Motion Item #1 to state: The codes will be AP-1, AP-2 and AP-3 for areas of advanced practice approval on pocket license.
 - Motion rescinded.
- ❖ Motion Item #1 passed unanimously.
- ❖ Discussion: The Board discussed Motion Item #2 requesting the Executive Officer draft regulatory languages clarifying the role of the codes. Ms. Evert explained that licensees could continue to use these initials after their name, but it would be at their own risk and they would hold the burden of proving the validity of the approval. The Board would not take action against a licensee for using these initials unless a legitimate complaint were filed alleging that the licensee was misrepresenting their practice. Ms. Wietlisbach requested clarification as to whether a licensee could continue to use the initials HTC, PAM or SWC after the Board changes it's coding. Ms. Evert responded that they could but if those initials were too similar to another organization, the other organization could take issue with the licensee using the initials.
- ❖ Motion Item #2 passed unanimously.
- ❖ Discussion: The Board discussed Motion Item #3 granting the use of the initials "L" or "C" by licensees. Members discussed the necessity of this item and the possibility of modifying the statute which will be addressed later in the meeting.
 - Ms. Evert moved to amend Motion Item #3 as follows. Delete the first sentence and modify the second sentence as follows: The Executive Officer will check that all the policies and regulatory language clearly reflect that the only initials that we officially grant for use by OTs and OTAs following their name and report any recommendations regarding this to the next Board meeting.
 - Amendment accepted.
- ❖ Motion Item #3 passed unanimously.

2. Approval of Proposed Regulatory Language to Amend Title 16, Division 39, California Code of Regulations, Section 4154 – Post Professional Education and Training, and Section 4156 – Advanced Practice Certification

Ms. Evert reviewed the language with members and identified the modifications to the text in Section 4154.

- ❖ Mary Evert moved to approve the amendments to the proposed regulatory language to amend Title 16, Division 39, California Code of Regulations, Section 4154 – Post Professional Education and Training.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

Ms. Evert reviewed the amended text in Section 4155. Ms. Grangaard believes that the language in subsection (c) is setting forth a different standard for out-of-state

applicants. Ms. Wietlisbach believes that out-of-state applicants are being held to a different standard because they did not have the opportunity to qualify under the grandfathering clause. Ms. Freedman stated that the Board will have a difficult time getting this language passed because the statute indicates that applicants have to demonstrate to the satisfaction of the Board that they have completed post-professional education and training. The standard doesn't make reference to whether applicants are in-state or out-of-state. If the Board tries to make a distinction, there will be an equal protection problem. Ms. Wietlisbach questioned why a CHT who qualified for advanced practice in hand therapy and physical agent modalities in 2003 would not qualify now. Ms. Freedman stated that if the Board determines that an HTCC certificate assures that the applicant has met the minimum requirements, it doesn't matter if the applicant is in-state or out-of-state. Ms. Grangaard stated that during the initial development of the advanced practice regulatory language, the Board did recognize that the credentials for CHTs met and/or exceeded the standards set forth in the statute.

Ms. Evert questioned equivalency methods for the swallowing approval. Ms. Grangaard pointed out there is no credentialing body for swallowing.

The modified text was further modified to delete the following phrases from subsection (c): "who has held an active occupational therapist license in good standing in any state other than California since December 31, 2003 and has been" and "since before December 31, 2003."

The word "certificates" was corrected to read "approval." The last two subsections were corrected to read (e) and (f) instead of (d) and (e).

- ❖ Mary Evert moved to approve the amendments to the proposed regulatory language to amend Title 16, Division 39, California Code of Regulations, Section 4155 – Advanced Practice Certification excluding the amendments to subsection (c).
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Discussion: Ms. Freedman recommended that the Board strike subsection (d) from the amendments and put the timeline in a policy instead of the regulation.
- ❖ Ms. Evert amended the motion to delete subsection (d) from the modified text.
- ❖ Motion passed unanimously.

- ❖ Christine Wietlisbach moved to delete the entire subsection (c) from the modified text.
- ❖ Mary Evert seconded the motion.
- ❖ Motion passed unanimously.

3. Other Informational Items

No other informational items.

G. Approval of Proposed Regulatory Language to Amend Title 16, Division 39, California Code of Regulation Section 4123 – Limited Permit

Ms. Martin explained that current regulatory language requires that the limited permits be valid for four months from the date of application, although staff has been making the expiration date four months from the date of issuance. She proposed that the permits be valid for three months from the date of issuance, which would eliminate any issues with the length of time it takes to approve the application. Approval of application can be delayed due to the fingerprint process or required documents not being received in a timely manner. Further modifications would include the cancellation of the limited permit two weeks following the expiration date of the candidate's eligibility to test period. This modification resulted from language in the statute that requires the candidate take the first available exam. Language in the statute was developed when the exam was only given four times a year, as opposed to the current computerized on-demand testing. The Board knows the candidate's eligibility expiration date because they are required to submit their Authorization to Test letter. Ms. Martin does not believe that candidates should be allowed to practice under their limited permit once their eligibility to test period has expired. The intent of the statute was to allow them to practice while waiting to test or waiting for the results.

Ms. Martin further explained that limited permit holders will be required to provide the Board with employer information so that the Board can inform the employer directly if the application fails to pass the test.

- ❖ Mary Evert moved to approve the proposed language to amend Title 16, Division 39, California Code of Regulations, Section 4123 – Limited Permit.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

H. Approval of Proposed Regulatory Language to Amend Title 16, Division 39, California Code of Regulations, Section 4141 - Assessment of Administrative Fines

Ms. Martin stated that the Board requested that staff modify the citation and fine regulations to include a Class D violation for failing to report a change of address. They further requested that fraudulent medical billing be moved from a Class B to a Class A violation. Staff also added specificity regarding practicing without a current and valid license, which was previously only listed as a Class C violation. Practice without a current license will now be listed under all sections depending on the length of time. This will allow the Board to differentiate the fines among applicants who have been practicing without a license since the licensing law went into effect and a licensee who fails to renew their license in a timely manner. The proposal will also make the regulation consistent with the statute which authorizes fines of up to \$5,000.

Ms. Evert informed staff that the reference to \$2,000 in subsection (a) needs to be corrected to read \$5,000.

- ❖ Mary Evert moved to approve the proposed language to amend Title 16, Division 39, California Code of Regulations, Section 4141 – Assessment of Administrative Fines with the corrections.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Motion passed unanimously.

I. Adoption of Proposed Regulatory Language to Amend Title 16, California Code of Regulations Section 4114 – Abandonment of Application

Ms. Martin reviewed the proposed language and explained the rationale behind the modifications.

- ◆ **Mary Evert moved to adopt the modified language noticed on May 19, 2006, for the regulatory amendments to Title 16, Division 39, California Code of Regulations, Section 4114, and to delegate authority to the Executive Officer to make any technical, non-substantive changes.**
- ◆ **Christine Wietlisbach seconded the motion.**
- ◆ **The motion carried unanimously.**

Ms. Grangaard questioned whether applicants who filed applications over two years ago needed to be investigated for possible unlicensed practice. Ms. Martin indicated that this could be done if the Board requested. Staff will investigate aged applications.

J. Practice Committee Report

Deborah Bolding, Member of the Practice Committee, gave the following report from the Committee's November 30, 2006 meeting. The report from the August meeting will be deferred.

- Discussed the possibility of using teleconferences to approve Applications for Post-Professional Education in a timelier manner.
- Deferred the discussion of the Application for Post-Professional Education because the amended application was not available for review.
- Considered reciprocity for advanced practice applicants from other state. Moved to recommend that the Board consider the issue of the effect of ACOTE standards on advanced practice and the transition to the new standards.
- Deferred the discussion of the license/certification requirements for instructors at educational institutions. Legal Counsel will reframe the issue.
- Reviewed outreach materials for new licensees.
- Future agenda items will include:
 - Discussion of licensure/certification for instructors at education institutions
 - Report on pending assignments
 - Fieldwork sites – ethic practice – reporting requirements

1. Committee's Roles and Responsibilities

Ms. Grangaard stated that Board staff prepared a draft of the Practice Committee's roles and responsibilities for the Committee's review. This was prepared in order to guide staff. This is presented for informational material for the Board.

2. Revisions to the Application for Advanced Practice Approval and Instructions

Ms. Martin reviewed the instructions for the Application for Advanced Practice Approval with the members, along with the information that will appear on the Board's Web page.

3. Recommendation to Board to Amend Title 16, California Code of Regulations, Section 4161, Continuing Competency

Ms. Martin reviewed the proposed regulatory amendments that were presented to the Practice Committee. The language concerns the specific requirements for professional development units (PDUs) for applicants who have not practiced within five years or taken the examination within the two years of submitting their application. The Practice Committee is deferring to the Board for the actual number of hours required.

- ❖ Mary Evert moved to approve the proposed regulatory language to amend Title 16, Division 39, California Code of Regulations, Section 4161(f) – Limited Permit.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ Discussion: The Committee questioned whether individuals out of practice should have a certain number of PDUs for each year that they been out of practice. Ms. Martin explained a chart that had previously been presented to the Practice Committee with various scenarios. Ms. Evert discussed the possibility of having practitioners' complete refresher courses, and to focus on entry-level topics and not the specific number of units. Ms. Wietlisbach recommended that the Board research how other Board's handle this issue. Ms. Evert stated that Canadians have a fieldwork-type program that they are required to go through prior to reentering the profession. Ms. Martin pointed out that the proposed language requires that all PDUs for licensure must be directly related to occupational therapy, unlike license renewal which only requires 6 of the 12. The Board went on to discuss the different scenarios of practitioners being out of the profession and the best ways to ensure that they are competent once they return. Ms. Evert stated that the Code of Ethics requires practitioners to take the exam if they were out of practice for a certain length of time. Ms. Martin indicated that she believes that NBCOT requires their members to take the exam again if they let their certification lapse for a certain number of years. Ms. Wietlisbach pointed out that the examination is now on demand, so applicants would not have to wait to retest. They discussed the matter of ensuring that applicant took courses that were considered entry level, not specialty-based. They also discussed requiring

that applicant take coursework, and not earn units via the other activities outlined in Section 4161(c).

- ❖ Mary Evert moved that the motion be referred back to the Practice Committee for an equitable solution concerning the number and type of PDUs required.
- ❖ Margaret Cunningham seconded the motion.
- ❖ Motion passed (3-0)

Ms. Evert also requested that the Practice Committee discuss Section 4161(c)(8) to consider giving licensees credit for making presentations more than one time since they are never identical.

K. Executive Officer's Report

1. Budget Report

Ms. Martin stated that the budget for FY 2005-06 was \$761,000; the Board spent \$648,000 and reverted slightly over \$100,000. The FY 2006-07 budget will increase to \$847,000 due to increase to several line item including Attorney General costs. As of October 31, 2006, the Board has spent approximately \$220,000, or nearly one-quarter, of the budget. The FY 2007-08 budget will increase due to Budget Change Proposals that were approved for additional staff. Staff conducted workload studies and were able to justify five additional positions but were only approved for two. A current fund condition is not available because the DCA Budget Analyst assigned to the Board is on maternity leave. A fund condition, including projections based on the fee decrease, will be provided at the next meeting.

2. Update on Internal Audit

Ms. Martin reviewed the response to the internal audit report and Action Plan. She stated that some of the items on the Action Plan have already been completed. She will update the Action Plan for each meeting to provide members with the status.

3. Update on Legislation/Regulations

Ms. Martin reviewed an extract of Senate Bill 1476, which extends the length of time an applicant who is licensed in another state can practice in California from 45 days to 60 days. The law now requires that an application be on file with the Board. This bill goes into effect on January 1, 2007.

She reminded members that the Sunset date was extended to 2013.

4. 2007/08 Legislative Proposals

Ms. Martin stated that the legislative proposals are being provided as informational items only. A teleconference will be held in January 2007 to vote on the proposals.

5. Personnel Update

Ms. Martin informed the Board that Marsha Gove, Office Assistant, vacated her position in September. The Board is currently advertising for three positions.

6. Other Informational Items

Ms. Martin informed the Board that a draft of the Continuity of Operations/Continuity of Government (COOP/COG) plan was sent out in September. Finalizing the plan is scheduled for February or March 2007.

L. Enforcement Data for the period of April 1, 2006 – June 30, 2006

Ms. Martin provided enforcement statistics to the Board for the period April 1, 2006 through June 30, 2006.

M. Enforcement Data for the period of July 1, 2006 – September 30, 2006

Ms. Martin provided enforcement statistics to the Board for the period July 1, 2006 through September 30, 2006.

N. Future Agenda Items

There were no future agenda items suggested at this time.

O. Plan to Plan – Strategic Planning Process (out of order)

Ms. Grangaard stated that because not all members were present at this point in the day, a sub-committee would be appointed to work with staff. The Committee will consist of Mary Evert and Luella Grangaard. They will draft a document with feedback from members and staff to present in a teleconference prior to the March meeting or at the March meeting.

P. Public Comment Session

No public comments

Q. CLOSED SESSION pursuant to Government Code Section 11126(c)(3) to deliberate on disciplinary decisions

R. CLOSED SESSION pursuant to Government Code Section 11126(a)(1) for the evaluation of the Executive Officer

T. Adjournment

The meeting adjourned at 2:00 p.m.